



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Daniel J. KESSLER

Group Art Unit: 2837

Application No.: 10/626,563

Examiner: K. Lockett

Filed: July 25, 2003

Docket No.: 109889

For: MUSIC INSTRUMENT COVER

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal is filed herewith. Applicant respectfully requests review of the Rejection mailed December 16, 2005 in the above-identified application.

This review is requested because the §102(b) rejection of independent claims 1, 10 and 18 over U.S. Patent No. 6,410,834 to Hearfield is clearly in error for at least the following reasons.

**I. Hearfield Explicitly Requires "Removal Of Hardware,"
In Contrast to What Independent Claims 1 and 18 Require**

Independent claims 1 and 18 each require means for attaching a front portion of the claimed instrument cover to a stringed instrument body without requiring removal of hardware of the stringed instrument body. The December 16 Rejection asserts, citing Fig. 1 of Hearfield, that Hearfield discloses this feature. However, this is clearly incorrect, as discussed below.

At C3/L56 - C3/L6, Hearfield states, in relevant part, "[a]ll the embodiments have the following characteristics in common: ...the covers...allow the body hardware of the stringed

musical instrument...to protrude and to function normally once said hardware has been reassembled on the body of said instrument with the protective cover attached" (emphasis added). See also, e.g., C4/L58-60, C5/L38-39, C6/L11-12, C6/L64-65, and C718-19, each describing that the hardware is "reattached" to the instrument.

Thus, Hearfield clearly requires removal of the hardware before the cover is attached. Therefore, Hearfield cannot reasonably be viewed as teaching or suggesting require means for attaching a front portion of an instrument cover to a stringed instrument body without requiring removal of hardware of the stringed instrument body.

II. The Examiner's Definition of "Stretchable" In Independent Claims 10 and 18 Is Contrary To Applicant's Express Definition of "Stretchable"

It is well established that an applicant is entitled to be his or her own lexicographer. At lines 6-8 of paragraph [0015], Applicant's specification states, "While leather and canvas may, in a strict sense, be considered to stretch to some degree, they do not noticeably stretch when subjected to a tensile force by hand. Thus, in the context of this application, 'stretchable' shall mean 'able to be stretched noticeably by hand'" (emphasis added).

Thus, Applicant has given an express definition of "stretchable" that excludes leather. In contrast, the Hearfield embodiments are all made of leather, and Hearfield teaches away from using materials that are not leather. See, e.g., the discussion in this regard at page 2, lines 3-10 of the Pre-Appeal Brief Request For Review filed on August 29, 2005.

Therefore, when Applicant's express definition is used, as is required, Hearfield clearly does not disclose "stretchable material" as recited in independent claims 10 and 18.

III. Conclusion

In view of the foregoing, Applicant maintains that all of the pending claims are patentable over the applied prior art, and requests withdrawal of the rejections and allowance of the application.

Should the review panel believe that anything further is desirable to place the application in even better condition for allowance, it is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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Attachment:
Notice of Appeal

Date: March 2, 2006

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